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*Attorneys for Irving H. Picard, Trustee for the
Substantively Consolidated SIPA Liquidation of
Bernard L. Madoff Investment Securities LLC and
the Estate of Bernard L. Madoff*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION CORPORATION,

Plaintiff,

v.

BERNARD L. MADOFF INVESTMENT SECURITIES
LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation of Bernard
L. Madoff Investment Securities LLC,

Plaintiff,

v.

MARC I. HERTZ IRREVOCABLE TRUST DTD 3/15/92;
KENNETH D. WEISER, in his capacity as Trustee of the
Marc. I Hertz Irrevocable Trust DTD 3/15/92; JOHN B.
BEASLEY, in his capacity as Trustee of the Marc. I Hertz
Irrevocable Trust DTD 3/15/92; and MARC I. HERTZ,

Defendants.

No. 08-01789 (SMB)

SIPA Liquidation

(Substantively Consolidated)

Adv. Pro. No. 10-04879
(SMB)

TRUSTEE'S REQUEST FOR JUDGMENT BY DEFAULT

To: CLERK OF THE COURT
UNITED STATES BANKRUPTCY COURT

Irving H. Picard (the "Trustee"), as trustee for the liquidation of the business of Bernard L. Madoff Investment Securities, LLC under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa, *et seq.*, and Bernard L. Madoff, by and through his counsel, Baker & Hostetler LLP, respectfully requests that the Clerk of the Court issue a Judgment by Default against Defendants Marc I. Hertz Irrevocable Trust DTD 3/15/92 and Kenneth D. Weiser, in his capacity as Trustee for the Marc I. Hertz Irrevocable Trust DTD 3/15/92, pursuant to Rule 55(b)(1) of the Federal Rules of Civil Procedure, made applicable to this Adversary Proceeding by Rule 7055(b)(1) of the Federal Rules of Bankruptcy Procedure and Local Bankruptcy Rule for the Southern District of New York 7055-2(a), for failure to plead or otherwise defend the above-captioned action as it fully appears from the Court file and from the attached Affidavit.

WHEREFORE, the Trustee respectfully requests that this Court grant the Trustee's Request for Judgment by Default in its entirety and provide for such other relief as this Court deems just and proper.

Dated: New York, New York
May 10, 2017

Respectfully submitted,

Of Counsel:

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/s/ Nicholas J. Cremona

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Defendant.

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v.

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KENNETH D. WEISER, in his capacity as Trustee of the
Marc. I Hertz Irrevocable Trust DTD 3/15/92; JOHN B.
BEASLEY, in his capacity as Trustee of the Marc. I Hertz

No. 08-01789 (SMB)

SIPA Liquidation

(Substantively Consolidated)

Adv. Pro. No. 10-04879
(SMB)

Irrevocable Trust DTD 3/15/92; and MARC I. HERTZ,
Defendants.

AFFIDAVIT FOR JUDGMENT BY DEFAULT

[illegible]

Farrell A. Hochmuth, being duly sworn, deposes and states:

1. I was admitted pro hac vice into this Court and am a partner with the firm of Baker & Hostetler LLP, attorneys for Irving H. Picard (“Trustee”), Trustee for the consolidated Liquidation of Bernard L. Madoff Investment Securities LLC (“BLMIS”) and the Estate of Bernard L. Madoff, and I am familiar with all the facts and circumstances in this action.

2. I make this affidavit pursuant to Rule 7055-2(a) of the Local Rules of the Bankruptcy Court for the Southern District of New York, in support of the Trustee's application for entry of a default judgment against Defendants Marc I. Hertz Irrevocable Trust DTD 3/15/92 and Kenneth D. Weiser, in his capacity as Trustee for the Marc I. Hertz Irrevocable Trust DTD 3/15/92 ("Defendants").

3. This action is an adversary proceeding commenced before the same Court before which the main underlying SIPA proceeding, No. 08-01789 (SMB) (the “SIPA Proceeding”), is pending. The SIPA Proceeding was originally brought in the United States District Court for the Southern District of New York as *Securities and Exchange Commission v. Bernard L. Madoff Investment Securities LLC et al.*, No. 08 CV 10791, and has been referred to this Court. This Court has jurisdiction over this adversary proceeding under 28 U.S.C. § 1334(b) and 15 U.S.C. §§ 78eee(b)(2)(A), (b)(4). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (H), and (O).

4. On December 27, 2011, the Trustee, in accordance with Bankruptcy Rule 7004(b) of the Federal Rules of Bankruptcy Procedure, timely served the Summons and Complaint upon Defendants. *See* Dkt. Nos. 3 and 4. An Affidavit of Service evidencing proper and timely service was filed with the Court. Dkt. No. 4. A true and correct copy of the Affidavit of Service is attached hereto as Exhibit 1.

5. Defendants have not answered the Complaint, and the time for Defendants to answer the Complaint has expired. True and correct copies of the Certificates of Default obtained pursuant to Local Bankruptcy Rule 7055-1 are attached hereto as Exhibit 2 and Exhibit 3. *See also* Dkt. Nos. 7 and 8.

6. The Complaint in this adversary proceeding asserted claims pursuant to sections 78fff(b), 78FFF-1(a) and 78fff-2(c)(3) of the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa, *et seq.*, sections 105(a), 544, 548(a), 550(a), and 551 of the United States Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.*, and other applicable law, seeking the avoidance and recovery of \$280,000.00 in connection with certain transfers of property by BLMIS to or for the benefit of Defendants.

7. On September 15, 2016, the Trustee voluntarily dismissed Counts Two through Six of the Complaint against Defendants with prejudice and Count Seven¹ without prejudice. The dismissal had no effect on or application to the Trustee's claims against Defendants in Count One of the Complaint. Dkt. No. 14.

8. This action seeks judgment for the liquidated amount of \$280,000.00 pursuant to Count One of the Complaint, which is justly due and owing, and no part of which has been paid.

¹ The Trustee's voluntary dismissal of Count Seven dismissed defendant Marc I. Hertz, who was only sued pursuant to Count Seven. Upon information and belief, defendant John B. Beasley is deceased.

9. Attached hereto as Exhibit 4 is a true and correct copy of the Affidavit of Service reflecting proper service of the Clerk's Entry of Default on Defendants on February 22, 2017. *See also* Dkt No. 10.

10. I declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge, information and belief.

Dated: Houston, Texas May 10, 2017



Farrell A. Hochmuth

Sworn to before me this
10 day of May, 2017


Notary Public, State of Texas

